



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHNNY DEWAYNE LEWIS
(TDCJ #1879387 and former
TDCJ # 1558124)

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VS.

CIVIL ACTION NO.4:14-CV-836-A

CORRECTIONS CORPORATION OF
AMERICA, et al.

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

In this case, Texas Department of Criminal Justice inmate/plaintiff Johnny Dewayne Lewis filed a new civil case, accompanied by a motion for leave to proceed *in forma pauperis*. Resolution of the motion was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b). The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

This case is a new civil action.

B. PARTIES

Johnny Dewayne Lewis is the plaintiff.¹ He has named as several defendants with the lead defendant listed as the Corrections Corporation of America.

¹Plaintiff Lewis acknowledges that he has had several previous TDCJ numbers, including 1558124. Compl. § VII.

C. LEGAL ANALYSIS

Although plaintiff Lewis has filed a motion for leave to proceed in forma pauperis, Court records reveal, as a result of previously filing frivolous suits, he is barred from proceeding under 28 U.S.C. § 1915 in any civil action or appeal filed while he is incarcerated or detained unless he is under imminent danger of serious physical injury.² Lewis obtained the qualifying dismissals in this the United States District Court for the Northern District of Texas and in the United States Court of Appeals for the Fifth Circuit.³ Because of this bar, Lewis has had three other recent lawsuits filed in this division dismissed as barred under 28 U.S.C. § 1915(g).⁴

In this case, Lewis has not set forth grounds for leave to file in compliance with 28 U.S.C. § 1915(g). Lewis does recite that an officer Looney ordered other inmates to "end his life" for filing grievances, and that other inmates were told to "beat him or

²As a result of the Prison Litigation Reform Act (PLRA) amendments to 28 U.S.C. 1915, section 1915(g) provides that a prisoner may not proceed in forma pauperis in a civil action if, on three or more occasions, the prisoner had a case dismissed as frivolous, malicious, or for failure to state a claim, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C.A. § 1915(g) (West 2006).

³See *Lewis v. Thaler, et al.*, No. 09-10993 (5th Cir. December 9, 2010) ("Because Lewis has now accumulated three strikes [under § 1915(g)] he is barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury").

⁴See *Lewis v. Corrections Corp. of America, et al.*, No. 4:14-CV-674-A (N.D. Tex. Sep. 23, 2014); *Lewis v. Corrections Corp. of America, et al.*, No. 4:14-CV-673-Y (N.D. Tex. Sep. 24, 2014); *Lewis v. Corrections Corp. of America, et al.*, No. 4:14-CV-547-O (N.D. Tex. Sep. 16, 2014).

better yet end his life.”(Compl. § V.) But Lewis alleges this took place on October 4, and he did not sign the complaint until October 13, and he has not claimed that he was then approached by any other inmate, and has not alleged that he suffered any harm. Further, Lewis does not seek any immediate relief. (Compl. § VI). Moreover, he acknowledges in his in-forma pauperis motion that he has been housed in segregation. (Motion to Proceed IFP, at 3.) Lewis’s allegations do not set forth sufficient facts to support a finding that he is “under imminent danger of serious physical injury.” Thus, the undersigned finds that Johnny Dewayne Lewis is not entitled to proceed *in forma pauperis* in this action and, if he wishes to proceed with this suit, he must pay a full filing fee.

RECOMMENDATION

It is therefore RECOMMENDED that Johnny Dewayne Lewis (TDCJ No.1879387 prior TDCJ number 1558124) should not be allowed to proceed in forma pauperis in this action and that the motion to proceed in forma pauperis be DENIED by the district judge. It is further RECOMMENDED that the district judge inform plaintiff Lewis that his complaint will be subject to dismissal without further notice under Federal Rule of Civil Procedure 41(b), unless he pays to the clerk of Court the filing and administrative fees of

\$400.00⁵ within fourteen (14) days after the district judge's order.

NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court is extending the deadline within which to file specific written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation until November 11, 2014. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual finding and legal conclusion if it has been accepted by the United

⁵In addition to the filing fee of \$350, the District Court Miscellaneous Fee Schedule, effective May 1, 2013, requires payment of an administrative fee for filing a civil action in district court of \$50. See 28 U.S.C. § 1914(a) and District Court Miscellaneous Fee Schedule, note 14.

States District Judge. See *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is ORDERED that Plaintiff is granted until November 11, 2014 to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation.

It is further ORDERED that the above-styled and numbered action, previously referred to the United States Magistrate Judge, be and is hereby, returned to the docket of the United States District Judge.

SIGNED October 21, 2014.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE